

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

6988

RECORDATION NO. _____ Filed & Recorded

APR 9 1973 - 2 10 PM

INTERSTATE COMMERCE COMMISSION

CERTIFICATION

I, Mary Jane Gill, a Notary Public, do hereby certify that I have compared the attached copy of the Lease of E.M.D. Switcher Locomotives, dated as of December 29, 1972, between The Northern Trust Company and Elgin, Joliet and Eastern Railway Company ("Agreement") with the original of the Agreement and the attached copy of the Agreement is a true and correct copy in all respects.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4th day of April, 1973.

Mary Jane Gill
Notary Public

(Seal)

LEASE OF
E.M.D. SWITCHER LOCOMOTIVES

LEASE OF E.M.D. SWITCHER LOCOMOTIVES dated as of Apr. 24, 1972, between ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, an Indiana and Illinois corporation (hereinafter called the "Lessee") and THE NORTHERN TRUST COMPANY, an Illinois banking corporation (hereinafter called the "Lessor"),

W I T N E S S E T H:

WHEREAS, Lessor desires to lease to Lessee and Lessee desires to lease from Lessor two 1,000 horsepower E.M.D. Diesel-Electric switcher type locomotives, Serial Nos. 1008 and 4713 (hereinafter singly and collectively called the "E.M.D.") which are railroad rolling stock, at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and of the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases to Lessee the E.M.D., upon the following terms and conditions:

1. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the law of the State of Illinois.

2. Delivery and Acceptance of E.M.D. Lessor will cause the E.M.D. to be delivered to Lessee at Gary, Indiana. Upon such delivery,

Lessee will inspect the same and if the E.M.D. are found to be acceptable, will accept delivery and will execute and deliver to Lessor a Certificate of Acceptance stating that the E.M.D. have been inspected and accepted by Lessee on the date of such Certificate of Acceptance and is marked in accordance with Section 5 hereof, whereupon the E.M.D. shall have been deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to the terms and conditions of this Lease.

3. Rentals. Lessee agrees to pay to Lessor as rental for the E.M.D. on December 31, 1972, the sum of \$3,950 and 47 consecutive quarter-annual payments on the last day of March, June, September and December in each year, commencing December 31, 1972, in the amount of \$3,950, each with the final quarter-annual payment to be due on September 30, 1984. If for any reason the E.M.D. is delivered to and accepted by the Lessee pursuant hereto after December 31, 1972, the first rental payment shall be due and payable on the date the E.M.D. is so delivered and accepted and shall be in an amount equal to \$3,950 less 1.111% of \$3,950 for each day elapsing between December 31, 1972, and the date the E.M.D. is so delivered and accepted (beginning January 1, 1973, and ending with the date the E.M.D. is so delivered and accepted) and the last installment shall be in an amount equal to \$3,950 plus the amount by which \$3,950 exceeds the first installment as computed above in this sentence. All payments under this Lease shall be made by Lessee to Lessor at 50 South La Salle Street, Chicago, Illinois 60690.

This Lease is a net lease and Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent for any reason, including, but not limited to, abatements or reductions due to any present or future claims of Lessee against Lessor under this Lease or otherwise or against the seller of the E.M.D. nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of the E.M.D. from whatsoever cause, the taking or requisition of the E.M.D. by condemnation or otherwise, the lawful prohibition of Lessee's use of the E.M.D., the interference with such use by any private person or corporation, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding; it being the intention of the parties hereto that the rent and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease, and Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of the E.M.D. except in accordance with the express terms hereof.

4. Term of Lease. The term of this Lease shall begin on the date of delivery to and acceptance by Lessee of the E.M.D. and, subject to the provisions of Sections 7 and 9, shall terminate 3 months after the date on which the final quarter-annual payment of rent in respect thereof is due hereunder, plus the number of days,

if any, elapsing between December 31, 1972 and the date of delivery to and acceptance by Lessee of the E.M.D.

5. Identification Marks. Lessee will keep and maintain plainly, permanently and conspicuously marked on each side of the E.M.D. in letters no less than 1 inch in height, the words "The Northern Trust Company, Lessor".

Except as provided in the immediately preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on the E.M.D. as a designation that might be interpreted as a claim of ownership, provided, however, that Lessee may letter the E.M.D. with the names or initials or other insignia customarily used by Lessee on equipment used by it of the same or a similar type for convenience of identification of its rights to use the E.M.D. as permitted under this Lease.

6. Taxes. Lessee will promptly pay all taxes (other than federal, state or local income taxes or franchise taxes measured by net income payable by Lessor by reason of the receipt of rentals hereunder), license fees, assessments, charges, fines or penalties (which taxes, license fees, assessments, charges, fines and penalties are hereinafter called "impositions") which may be imposed upon the E.M.D. or for the use or operation thereof or upon Lessor by reason of its ownership thereof and will keep at all times the E.M.D. free and clear of all impositions which might in any way affect the title of Lessor or result in a lien upon the E.M.D.; provided, however, that Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate

legal proceedings such impositions. If any impositions shall have been charged or levied against Lessor directly and paid by Lessor, Lessee shall reimburse Lessor on presentation of an invoice therefor.

7. Payment in Case of Loss or Destruction of the A.C.S.

In the event that either E.M.D. shall be or become worn out, lost, stolen, destroyed, or, in the opinion of Lessor or Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "casualty occurrences") during the term of this Lease, Lessee shall promptly notify Lessor with respect thereto and on the rental payment next succeeding such notice Lessee shall pay to Lessor an amount equal to the sum of (i) the rental due under Section 3 hereof on the date of such payment and (ii) an amount equal to the casualty value thereof as hereinafter defined as of the date of such payment in accordance with the schedule set forth below. The rental under this Lease for such E.M.D. shall cease to accrue as of the date of such payment. The term of this Lease shall terminate on the date of such payment and (except in the case of the loss, theft or complete destruction of the E.M.D.) the Lessor shall be entitled to recover possession of the E.M.D.

The casualty value of each E.M.D. as of any rental payment date shall be the amount set forth in the following schedule opposite the number of such rental payment date:

<u>Payment Number</u>	<u>Casualty Value</u>	<u>Payment Number</u>	<u>Casualty Value</u>	<u>Payment Number</u>	<u>Casualty Value</u>	<u>Payment Number</u>	<u>Casualty Value</u>
1	\$67,950	13	\$58,860	25	\$44,655	37	\$26,125
2	67,695	14	58,128	26	43,543	38	24,668
3	67,395	15	57,363	27	42,401	39	23,183
4	67,051	16	56,564	28	37,958	40	21,669
5	66,661	17	55,730	29	36,757	41	20,126
6	66,231	18	54,865	30	35,528	42	18,555
7	65,762	19	53,967	31	34,271	43	16,956
8	65,252	20	49,766	32	32,985	44	15,328
9	64,701	21	48,804	33	31,669	45	13,670
10	64,114	22	47,812	34	30,326	46	11,984
11	63,491	23	46,791	35	28,954	47	10,269
12	59,557	24	45,738	36	27,554	48	10,500

8. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE E.M.D., AS TO MERCHANTABILITY OR FITNESS OF THE E.M.D. FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE E.M.D., it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee, but Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney in fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of Lessor or Lessee, or both, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have as the purchaser of the E.M.D.. Lessee agrees that at its own cost and expense it will maintain and keep the E.M.D. in good order and repair, ordinary wear and tear excepted.

Lessee agrees to indemnify, protect and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of the entering into or the performance of this Lease, the ownership of the E.M.D., the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of the E.M.D. or any accident in connection with the operation, use, condition, possession, storage or return of the E.M.D. resulting in damage to body or injury to or death of any person, except as otherwise provided in Section 17 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease.

9. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an "event of default") shall occur:

A. default shall be made in payment of any part of the rental provided in Section 3 hereof and such default shall continue for 10 days;

B. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for 30 days after written notice from Lessor to Lessee specifying the default and demanding that the same be remedied;

C. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

D. any other proceedings shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations,

arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for Lessee or for the property of Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier;

Then, in any such case, Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the E.M.D.

shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may by its agents enter upon the premises of Lessee or other premises where the E.M.D. may be and take possession of the E.M.D. and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the E.M.D. for any purposes whatever; but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (i) as damages for loss of the bargain and not as a penalty, a sum which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for the E.M.D. which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over (y) the then present value of the rentals which

Lessor reasonably estimates to be obtainable for the E.M.D. during such period, such present value to be computed in each case on a basis of a 7% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenants or covenants of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

The failure of Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set

forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

10. Return of E.M.D. Upon Default. If this Lease shall terminate pursuant to Section 9 hereof, Lessee shall forthwith deliver possession of the E.M.D. to Lessor at any reasonable place on the lines of Lessee as Lessor may direct.

11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the E.M.D. or allow the E.M.D. to pass out of its possession or control, provided that Lessee may sublet the E.M.D. upon giving prior written notice thereof to Lessor. Lessee will not permit any liens to exist against the E.M.D.

12. Return of E.M.D. upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease, Lessee will, at the request of Lessor, deliver possession of the E.M.D. to Lessor at any reasonable place on the lines of Lessee as Lessor may direct.

13. Recording; Expenses. Prior to the delivery and acceptance of the E.M.D., the Lessee will, without expense to the Lessor, cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will, at its expense, from time to time, do and perform any act and will execute, acknowledge, deliver, file, register, record and deposit (and will re-file, re-register,

re-record or re-deposit whenever required) any and all instruments required by law or reasonably requested by the Lessor, for the purpose of proper protection, to the satisfaction of the Lessor, of its title to the E.M.D. or for the purpose of carrying out the intention of this Lease.

14. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of Lessee promptly to pay, to the extent legally enforceable, an amount equal to 6% per annum of the overdue rentals or other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

15. Purchase Option. Provided that this Lease has not been earlier terminated and Lessee is not in default hereunder, Lessee may by written notice delivered to Lessor not less than 6 months prior to the end of the term of this Lease, elect to purchase the E.M.D. covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" thereof as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value of the E.M.D. where then located which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and

willing seller under no compulsion to sell. If on or before 4 months prior to the expiration of the term of this Lease, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value of the E.M.D. such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean such independent appraiser as Lessor and Lessee may mutually agree upon, or failing such agreement, a panel of 3 independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first 2 so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to Lessor and Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, Lessor shall upon request of the Lessee execute and deliver to Lessee, or to Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the E.M.D. is free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under Lessor) for the E.M.D., and such other documents as may be required to release the E.M.D. from the terms and scope of this Lease and to transfer title thereto to Lessee or such assignee or nominee, in such form as may reasonably be requested by Lessee, all at Lessee's expense.

16. Expenses. Lessor and Lessee will each bear the respective fees and expenses, if any, of their respective counsel involved in the preparation and execution of this Lease.

17. Reports and Inspection. On or before December 31 in each year commencing with the year 1973, Lessee will furnish to Lessor a report regarding the condition, state of repair and location of the E.M.D. Lessor shall have the right to inspect the E.M.D. and the records of Lessee pertaining to the E.M.D.

18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to Lessor, at 50 South LaSalle Street,
Chicago, Illinois 60690;

(b) if to Lessee, at P.O. Box No. 880, Joliet,
Illinois 60434,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

19. Severability; Effect and Modification of Lease;
Modification of Trust Agreement. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable

such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the E.M.D. and supersedes all other agreements, oral or written, with respect to the E.M.D. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day first above written.

THE NORTHERN TRUST COMPANY,
as Lessor

(Corporate Seal)

By Stephen B. White
Vice President

ATTEST:

Thomas R. Boyden
Assistant Secretary

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY, as Lessee

(Corporate Seal)

By W. H. H. H. H.
Vice President

ATTEST:

A. H. H. H. H.
Assistant Secretary

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

On this 22nd day of December, 1972, before me personally appeared Stephen B. White, to me personally known, who, being by me duly sworn, says that he is a Vice President of The Northern Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority contained in its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ridgely J. Jackson
Notary Public

(Notarial Seal)

Ridgely J. Jackson, Notary Public
My Commission Expires January 24, 1976

STATE OF)
COUNTY OF) SS.

On this 29th day of December, 1972, before me personally appeared J. A. Fitzpatrick, to me personally known, who, being by me duly sworn, says that he is a Vice President of the Elgin, Joliet and Eastern Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Marjorie L. Syllie
Notary Public

(Notarial Seal)